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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Mexico: draft resolution

Protection of human rights and fundamental freedoms while countering terrorism

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the Universal Declaration of Human Rights,[1]

Reaffirming further the Vienna Declaration and Programme of Action,[2]

Reaffirming the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

Reaffirming also that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

Reaffirming further that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group,

Reiterating the important contribution of measures taken at all levels against terrorism, consistent with international law, in particular international human rights, refugee and humanitarian law, to the functioning of democratic institutions and the maintenance of peace and security and thereby to the full enjoyment of human rights and fundamental freedoms, as well as the need to continue this fight, including by strengthening international cooperation and the role of the United Nations in this respect,

[1] Resolution 217 A (III).
[2] A/CONF.157/24 (Part I), chap. III.

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Reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

Deeply deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as violations of international refugee and humanitarian law,

Noting with concern measures that can undermine human rights and the rule of law, such as the detention of persons suspected of acts of terrorism in the absence of a legal basis for detention and due process guarantees, the deprivation of liberty that amounts to placing a detained person outside the protection of the law, the trial of suspects without fundamental judicial guarantees, the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, and the return of suspects to countries without individual assessment of the risk of there being substantial grounds for believing that they would be in danger of subjection to torture, and limitations to effective scrutiny of counter-terrorism measures,

Stressing that all measures used in the fight against terrorism, including the profiling of individuals and the use of diplomatic assurances, memorandums of understanding and other transfer agreements or arrangements, must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law,

Stressing also that a criminal justice system based on respect for human rights and the rule of law, including due process and fair trial guarantees, is one of the best means for effectively countering terrorism and ensuring accountability,

Recalling article 30 of the Universal Declaration of Human Rights, and reaffirming that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted Governments, and that the international community should take the steps necessary to enhance cooperation to prevent and combat terrorism,[3]

Recognizing that respect for all human rights, respect for democracy and respect for the rule of law are interrelated and mutually reinforcing,

Emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment and of abiding strictly by the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[4] in the fight against terrorism,

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[3] See sect. I, para. 17, of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

[4] United Nations, *Treaty Series*, vol. 1465, No. 24841.

Recalling its resolution 68/178 of 18 December 2013, Human Rights Council resolutions 25/7 of 27 March 2014[5] and 29/9 of 2 July 2015,[6] as well as other relevant resolutions and decisions as stated in the preamble to General Assembly resolution 65/221 of 21 December 2012, and welcoming the efforts of all relevant stakeholders to implement those resolutions,

Recalling also its resolution 60/288 of 8 September 2006, by which it adopted the United Nations Global Counter-Terrorism Strategy, and its resolution 66/282 of 29 June 2012 on the review of the Strategy, reaffirming that the promotion and protection of human rights for all and the rule of law are essential to the fight against terrorism, recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals but complementary and mutually reinforcing, and stressing the need to promote and protect the rights of victims of terrorism,

Recalling further Human Rights Council resolution 22/8 of 21 March 2013,[7] by which the Council decided to extend the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,

Recalling its resolution 64/115 of 16 December 2009 and the annex thereto entitled "Introduction and implementation of sanctions imposed by the United Nations", in particular the provisions of the annex regarding listing and delisting procedures,

1. *Reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

2. *Deeply deplores* the suffering caused by terrorism to the victims and their families, expresses its profound solidarity with them, and stresses the importance of providing them with assistance and other appropriate measures to protect, respect and promote their human rights;

3. *Expresses serious concern* at the occurrence of violations of human rights and fundamental freedoms, as well as of international refugee and humanitarian law, committed in the context of countering terrorism;

4. *Reaffirms* that all counter-terrorism measures should be implemented in accordance with their obligations under international law, including international human rights, refugee and humanitarian law, thereby taking into full consideration the human rights of all, including persons belonging to national or ethnic, religious and linguistic minorities, and in this regard must not be discriminatory on grounds such as race, colour, sex, language, religion or social origin;

5. *Also reaffirms* the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights,[8] to respect certain rights as non-derogable in any circumstances, recalls, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in

[5] See *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 53* (A/69/53), chap. IV, sect. A.

[6] Ibid., *Seventieth Session, Supplement No. 53* (A/70/53), chap. V, sect. A.

[7] Ibid., *Sixty-eighth Session, Supplement No. 53* (A/68/53), chap. IV, sect. A.

[8] See resolution 2200 A (XXI), annex.

accordance with that article in all cases, underlines the exceptional and temporary nature of any such derogations,[9] and in this regard calls upon States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism;

6. *Urges* States, while countering terrorism:

(a) To fully comply with their obligations under international law, in particular international human rights, refugee and humanitarian law, with regard to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

(b) To take all steps necessary to ensure that persons deprived of liberty, regardless of the place of arrest or detention, benefit from the guarantees to which they are entitled under international law, including the review of the detention and other fundamental judicial guarantees;

(c) To ensure that no form of deprivation of liberty places a detained person outside the protection of the law, and to respect the safeguards concerning the liberty, security and dignity of the person, in accordance with international law, including international human rights and humanitarian law;

(d) To take all steps necessary to ensure the right of anyone arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power and the entitlement to trial within a reasonable time or release;

(e) To treat all prisoners in all places of detention in accordance with international law, including international human rights and humanitarian law;

(f) To respect the right of persons to equality before the law, courts and tribunals and to a fair trial as provided for in international law, including international human rights law, such as the International Covenant on Civil and Political Rights, and international humanitarian and refugee law;

(g) To safeguard the rights to freedom of expression, association and assembly, and to take measures to ensure that their counter-terrorism legislation and policies do not have a negative impact on the work of civil society;

(h) Also to safeguard the right to privacy in accordance with international law, in particular international human rights law, and to take measures to ensure that interferences with or restrictions on that right are not arbitrary, are adequately regulated by law[10] and are subject to effective oversight and appropriate redress, including through judicial review or other means;

(i) To review their procedures, practices and legislation regarding the surveillance of communications, their interception and the collection of personal data, including mass surveillance, interception and collection, with a view to upholding the right to privacy by ensuring the full and effective implementation of all their obligations under international human rights law, and to take measures to ensure that interference with the right to privacy is regulated by law, which must be publicly accessible, clear, precise, comprehensive and non-discriminatory, and that

[9] See, for example, general comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001.

[10] See A/HRC/13/37 and Add.1 and 2.

such interference is not arbitrary or unlawful, bearing in mind what is reasonable for the pursuance of legitimate aims;

(j) To protect all human rights, including economic, social and cultural rights, bearing in mind that certain counter-terrorism measures may have an impact on the enjoyment of these rights;

(k) To ensure that guidelines and practices in all border control operations and other pre-entry mechanisms are clear and fully respect their obligations under international law, particularly international refugee and human rights law, towards persons seeking international protection;

(l) To fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law;

(m) To refrain from returning persons, including in cases related to terrorism, to their countries of origin or to a third State whenever such transfer would be contrary to their obligations under international law, in particular international human rights, humanitarian and refugee law, including in cases where there are substantial grounds for believing that they would be in danger of subjection to torture, or where their life or freedom would be threatened, in violation of international refugee law, on account of their race, religion, nationality, membership of a particular social group or political opinion, bearing in mind obligations that States may have to prosecute individuals not returned, and in that case to adhere to the principle of extradite or prosecute;

(n) Insofar as such an act runs contrary to their obligations under international law, not to expose individuals to cruel, inhuman or degrading treatment or punishment by way of return to another country;

(o) To ensure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with international law, including human rights law;

(p) Not to resort to profiling based on stereotypes founded on grounds of discrimination prohibited by international law, including on racial, ethnic and/or religious grounds;

(q) To ensure that the interrogation methods used against terrorism suspects are consistent with their international obligations and are reviewed on a regular basis to prevent the risk of violations of their obligations under international law, including international human rights and refugee and humanitarian law;

(r) Also to ensure that any person who alleges that his or her human rights or fundamental freedoms have been violated has access to a fair procedure for seeking full, effective and enforceable remedy within a reasonable time and that where such violations have been established, victims receive adequate, effective and prompt reparation, which should include, as appropriate, restitution, compensation, rehabilitation and guarantees of non-recurrence, including where the violation constitutes a crime under international or national law, to ensure accountability for those responsible for such violations;

(s) Further to ensure due process guarantees, consistent with all relevant provisions of the Universal Declaration of Human Rights,[1] and their obligations under the International Covenant on Civil and Political Rights, the Geneva Conventions of 1949[11] and the Additional Protocols thereto of 1977,[12] and the 1951 Convention relating to the Status of Refugees[13] and the 1967 Protocol thereto[14] in their respective fields of applicability;

(t) To ensure that gender equality and non-discrimination are taken into account when shaping, reviewing and implementing all counter-terrorism measures, and to promote the full and effective participation of women in those processes;

(u) Also to ensure that any measures taken or means employed to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including the Charter of the United Nations, human rights law and international humanitarian law, in particular the principles of distinction and proportionality;

7. *Also urges* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to give due consideration to the recommendations of the special procedures and mechanisms of the Human Rights Council and to the relevant comments and views of United Nations human rights treaty bodies;

8. *Recognizes* the importance of the International Convention for the Protection of All Persons from Enforced Disappearance,[15] the implementation of which will make a significant contribution in support of the rule of law in countering terrorism, including by prohibiting places of secret detention, and encourages all States that have not yet done so to consider signing, ratifying or acceding to the Convention;

9. *Urges* all States that have not yet done so to sign, ratify or accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[4] and encourages States to consider ratifying as a matter of priority the Optional Protocol thereto,[16] the implementation of which will make a significant contribution in support of the rule of law in countering terrorism;

10. *Calls upon* the United Nations entities involved in supporting counter-terrorism efforts to continue to facilitate the promotion and protection of human rights and fundamental freedoms, as well as due process and the rule of law, while countering terrorism;

11. *Recognizes* the need to continue to ensure that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened in order to enhance their efficiency and transparency, and welcomes and encourages the ongoing efforts of the Security Council in support of these objectives, including by supporting the enhanced role of the Office of the Ombudsperson and continuing to review all the names of individuals and entities in the regime, while emphasizing the importance of these sanctions in countering terrorism;

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[11] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.
[12] Ibid., vol. 1125, Nos. 17512 and 17513.
[13] Ibid., vol. 189, No. 2545.
[14] Ibid., vol. 606, No. 8791.
[15] Resolution 61/177, annex.
[16] United Nations, *Treaty Series*, vol. 2375, No. 24841.

12. *Urges* States, while ensuring full compliance with their international obligations, to ensure the rule of law and to include adequate human rights guarantees in their national procedures for the listing of individuals and entities with a view to combating terrorism;

13. *Requests* the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to continue to make recommendations, in the context of his mandate, with regard to preventing, combating and redressing violations of human rights and fundamental freedoms in the context of countering terrorism, and to continue to report and engage in interactive dialogues on an annual basis with the General Assembly and the Human Rights Council in accordance with their programmes of work;

14. *Requests* all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by reacting promptly to his urgent appeals and providing the information requested, and to give serious consideration to responding favourably to his requests to visit their countries, as well as to cooperate with other relevant procedures and mechanisms of the Human Rights Council regarding the promotion and protection of human rights and fundamental freedoms while countering terrorism;

15. *Welcomes* the work of the United Nations High Commissioner for Human Rights to implement the mandate given to him by the General Assembly in its resolution 60/158 of 16 December 2005, and requests him to continue his efforts in this regard;

16. *Takes note with appreciation* of the report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism;[17]

17. *Also takes note with appreciation* of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,[18] which refers, inter alia, to the negative impact of counter-terrorism legislation and other measures on civil society;

18. *Encourages* States, while countering terrorism, to undertake prompt, independent and impartial fact-finding inquiries whenever there are plausible indications of possible breaches of their obligations under international human rights law, with a view to ensuring accountability;

19. *Requests* the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur to continue to contribute to the work of the Counter-Terrorism Implementation Task Force, including by raising awareness, inter alia, through regular dialogue, about the need to respect human rights and the rule of law while countering terrorism and support the exchange of best practices to promote and protect human rights, fundamental freedoms and the rule of law in all aspects of counter-terrorism, including, as appropriate, those identified by the Special Rapporteur in his report submitted to the Human Rights Council pursuant to Council resolution 15/15;[19]

20. *Welcomes* the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its respective bodies, namely,

[17] A/70/271.
[18] A/70/371.
[19] A/HRC/16/51.

the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate, with the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and the Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular with the Office of the High Commissioner, the Special Rapporteur, other relevant special procedures and mechanisms of the Human Rights Council and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism;

21. *Calls upon* States and other relevant actors, as appropriate, to continue to implement the United Nations Global Counter-Terrorism Strategy,[20] which, inter alia, reaffirms respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism;

22. *Requests* the Counter-Terrorism Implementation Task Force to continue its efforts to ensure that the United Nations can better coordinate and enhance its support to Member States in their efforts to comply with their obligations under international law, including international human rights and refugee and humanitarian law, while countering terrorism, and to encourage the Working Groups of the Task Force to incorporate a human rights perspective into their work;

23. *Encourages* relevant United Nations bodies and entities and international, regional and subregional organizations, in particular those participating in the Counter-Terrorism Implementation Task Force, which provide technical assistance, upon request, consistent with their mandates, related to the prevention and suppression of terrorism, to step up their efforts to ensure respect for international human rights and refugee and humanitarian law, as well as the rule of law, as an element of technical assistance, including in the adoption and implementation of legislative and other measures by States;

24. *Urges* relevant United Nations bodies and entities and international, regional and subregional organizations, including the United Nations Office on Drugs and Crime, within its mandate related to the prevention and suppression of terrorism, to step up their efforts to provide, upon request, technical assistance for building the capacity of Member States in the development and implementation of programmes of assistance and support for victims of terrorism in accordance with relevant national legislation;

25. *Calls upon* international, regional and subregional organizations to strengthen information-sharing, coordination and cooperation in promoting the protection of human rights, fundamental freedoms and the rule of law while countering terrorism;

26. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the Human Rights Council and to the General Assembly at its seventy-second session;

27. *Decides* to continue the consideration of the question at its seventy-second session under the item entitled "Promotion and protection of human rights".

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[20] Resolution 60/288.